BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

FOREIGN VOLUNTARY ASSIGNMENTS. — This subject, in so far as it relates to the conflict of laws between the states of the Union, is treated by a recent writer. *Foreign Voluntary Assignments for the Benefit of Creditors*, by Edson R. Sunderland, 2 Mich. L. Rev. 112, 180 (Nov. & Dec., 1903). The author states the general rule to be that a voluntary general assignment valid where made will be held valid as to the assignor's property everywhere. But where the thing assigned is land the rule seems clear that the validity of the foreign assignment is determined by the laws of the *situs*. *Gardner* v. *Commercial, etc., Bank*, 95 Ill. 298. Where the *res* is personalty the cases generally lay down the rule as it is stated by the author. Mr. Sunderland's language would seem to imply that he considers this rule to be related to the general doctrine that the validity of a contract depends on the *lex loci contractus*. This is true where the *res* is a chose in action, for in such a case the assignment is merely the creation of a power of attorney, and its effect is governed by the law under which the act is done. *Egbert* v. *Baker*, 58 Conn. 319. But the transfer of chattels is of course an entirely different matter. The binding force of a contract is imposed by the law of the place where the promise is given. But the transfer of title to chattels or realty can only be effected by the law having actual jurisdiction over them. *Cammell* v. *Sewell*, 5 H. & N. 728. Many of the cases talk of "comity" and of the rule that "the *situs* of personalty is the domicil of the owner." But to invoke such a fiction here seems unnecessary and misleading. That an assignment, valid where made, does, in general, pass title to chattels everywhere, results from the fact that, in general, any transaction which amounts to a transfer under the law of one jurisdiction is equally efficacious under the law of any other jurisdiction; such a transfer depending everywhere mainly on the intention of the parties and little on forms.

It is only, then, by reason of the various statutes which in some jurisdictions invalidate assignments giving preferences, or require the filing of bonds, inventories, etc., to perfect an assignment, that the question of the validity of a foreign assignment of chattels not conforming to the law of the *situs* is raised; and then it would seem to become entirely a matter of interpretation of the statute, though it is in fact very often treated as if it were a question of conflicting considerations of comity and of policy. As Mr. Sunderland points out, the problem has been answered in very different ways. Some decisions under the statutes hold the assignment wholly void; while by many courts it has been held valid as against creditors domiciled in the state of the assignment, by other courts as against all but domestic creditors, and by still others as against all persons. The author seems to approve of the decisions which make the statutes applicable only to domestic assignments; and, at all events, he would hold creditors domiciled in the state of the assignment bound thereby. There is, however, certainly strong reason to object to any distinctions based on citizenship. The intention to so discriminate will be hard to find in the statutes; and a statute which does expressly so discriminate offends against the spirit of comity and liberality which ought to prevail between civilized nations and particularly between states of the American Union. It is, of course, urged that an opposite rule would compel the domestic creditor to go to the foreign state for his remedy. But his contract was not made in reliance on the property within the state, and in justice he has no better claim to it than has a foreign creditor. Moreover, it would seem that a statute, making distinctions against citizens of another state, would now be held unconstitutional in the United States. *Blake*

v. *McClung*, 172 U. S. 239, 176 U. S. 59; *Belfast Savings Bank* v. *Stowe*, 92 Fed. Rep 100.

The question, as to assignments within the United States, loses much of its practical importance under the national bankruptcy act; for an assignment for the benefit of creditors is an act of bankruptcy and affords a basis for proceedings in bankruptcy, which involve all the bankrupt's property throughout the country, and nullify an assignment of less than four months' standing.

LIABILITY TO USERS OF ELECTRICITY OF ONE NEGLIGENTLY BREAKING THE CONDUCTING WIRES. — This, broadly, is the subject of an article criticising a recent case. *Liability for Breaking Electric Wires*, Anon., 10 Case & Com. 63 (Nov., 1903). In the case in question a building contractor undermined a sidewalk in violation of a local ordinance, and negligently broke wires in an underground conduit. These wires belonged to a company that was under a contract with a publishing company to supply electricity for power and light, subject, however, to accidental interruptions. The Supreme Court of Georgia denied the publishing company recovery in tort against the contractor, on the ground that its damage resulted only from the non-performance of a contract by a third party, and that the only damage proximately caused by the defendant was the injury to the property of the electric company. *Byrd* v. *English*, 117 Ga. 191. This reasoning the above article shows to be fallacious, since the plaintiff's rights did not arise from a breach of contract, because there was no breach, and since the plaintiff's damage was a direct and immediate result of the defendant's act. The writer argues that just as the proprietor of a store may have an action when access to his place of business is unlawfully cut off; or a mill owner, when his easement or license of a water-channel is wrongfully interfered with on the servient land by a third party, so in the principal case an action should lie for a direct interruption of the plaintiff's lawful business by the defendant's tortious act, without regard to the ownership of the immediate property injured.

This article, as most cases on the subject — to the confusion of lawyers and possibly of some courts — does not expressly distinguish between the question of legal cause and the question of the existence of a duty. In the case discussed the plaintiff's damage was unquestionably the direct and proximate result of the defendant's conduct. The exact point at issue is whether the defendant owed a duty of care not only to the owner of the wire, but also to all persons using the current. To determine when a duty exists is a problem frequently as difficult as it is important, and in each case it would seem to be a mixed question of law and of fact. The cases of easements and access to property, relied upon by the writer, all involve recognized property rights, and so are not helpful. A broader principle is involved here: whether as a general rule a defendant who admittedly has a legal duty of care to one party, has not also a similar duty to any other person or class of persons whom he knows, or, as an average reasonable man, should know, will almost inevitably suffer palpable damage as a direct result of the act which constituted the breach of duty to the first party. Such a rule would give a desirable result in the principal case, is in accordance with the conclusion of the article, and is believed to be wise, and in line with the weight of authority. A case closely in point is where a fire in the plaintiff's buildings would very probably have been extinguished by a volunteer fire company from a neighboring town. The defendant railroad was held liable for the loss of the buildings caused by its negligence in running over and cutting the hose which had been laid across its tracks. *Metallic Compression Casting Co.* v. *Fitchburg R. Co.*, 109 Mass. 277. See *Mott* v. *Hudson River R. Co.*, 8 Bosw. 345, 1 Robt. (N. Y.) 585. *Cf. Kahl* v. *Love*, 37 N. J. Law 5. This principle also appears where the defendant by an act constituting a breach of duty to one party makes more difficult the performance of a contract binding on the plaintiff. *Cue* v. *Breeland*, 78 Miss. 864. Compare, however, the following cases where the facts did not meet the exact requirements of the above rule and recovery was denied.